

## **RULE 76G. BRIEFS AND ORAL ARGUMENTS IN THE SUPERIOR COURT**

(a) Time for Filing Briefs. The appellant shall file the appellant's brief within 40 days after the date on which the record is filed in the Superior Court, the appellee shall file the appellee's brief within 30 days after service of the brief of the appellant, and the appellant may file a reply brief within 14 days after service of the brief of the appellee. In no event shall any brief be filed less than 6 calendar days before the date set for oral argument. Upon a showing of good cause, the Superior Court may increase or decrease the time limit specified in this subdivision.

(b) Consequence of Failure to File Briefs. If an appellant fails to comply with subdivision (a) of this rule, the Superior Court may dismiss the appeal for want of prosecution. If an appellee fails to comply, the appellee will not be heard at oral argument except by permission of the Superior Court.

(c) Scheduling of Oral Argument. Unless the Superior Court otherwise directs, all appeals shall be in order for hearing 20 days after the date on which appellee's brief is due or is filed, whichever is earlier. The parties may, by agreement, waive hearing and submit the matter for decision on the record and the briefs. The clerk of the Superior Court shall schedule oral argument for the first appropriate date after the appeal is in order for hearing, and shall notify each counsel of record or unrepresented party of the time and place at which oral argument will be heard.

## **RULE 76H. ELECTRONIC SOUND RECORDING**

(a) Recording of Proceedings. The Chief Justice of the Superior Court and the Chief Judge of the District Court shall provide for the electronic sound recording of proceedings in their respective courts by the use of recording equipment to be procured and installed in such manner as they may direct. They may by administrative order in their discretion direct that all proceedings, or certain proceedings, be recorded routinely without special request or order. Any proceedings not routinely recorded shall be recorded at the request of any party in such proceedings or by order of the presiding justice or judge on the court's own motion. Nothing in this rule shall prevent any party or counsel from recording or transcribing such proceedings independently at the expense of that party or

counsel, provided, however, that no record or transcription therefrom nor any part thereof, made other than under the authority granted to the Chief Justice or Chief Judge by this rule shall be incorporated in or substituted for any portion of a transcript included in a record on appeal without the consent of all parties to the proceedings and the approval of the presiding justice or judge.

(b) Personnel.

(1) *Operators.* The Chief Justice of the Superior Court and Chief Judge of the District Court shall designate as authorized operators of electronic recording equipment a sufficient number of court personnel to assure that an authorized operator will be available whenever and wherever court is in session. It shall be the responsibility of the Chief Justice and Chief Judge to employ and train personnel in the use of electronic equipment.

(2) *Transcribers.* The Chief Justice and Chief Judge shall appoint a sufficient number of transcribers of electronic recordings to assure that all transcription of such recordings required under this rule is accomplished without unreasonable delay. All persons appointed as transcribers shall be sworn to the faithful discharge of their duties.

(c) Courtroom Operation. The Chief Justice of the Superior Court and the Chief Judge of the District Court shall establish standards and procedures for courtroom operation of electronic recording equipment in their respective courts that will assure a complete and accurate oral recording of all proceedings, as well as a written record of all information necessary for an accurate transcription. At all times, the operation of the recording equipment shall be subject to the direction and order of the trial justice or judge, provided that the right of any party to have any proceedings recorded shall not thereby be defeated.

(d) Transcription.

(1) *In General.* The Chief Justice of the Superior Court and the Chief Judge of the District Court shall establish standards and procedures for transcription that will assure the timely production of a neat and accurate transcript of any portion of the recorded proceedings transcribed in accordance with this subdivision. They shall by administrative order provide for the ordering by any person or any person's attorney of a transcript of all or any portion of a proceeding to which such person is a party or is otherwise authorized by law to have access.

(2) *Transcript on Appeal.*

A. Appeals to the Law Court. In an appeal from the Superior Court or the District Court to the Law Court, the transcript of proceedings recorded in accordance with this rule shall be ordered and transmitted as provided in M.R. App. P. 5(b)(2) and 6(c).

B. Appeals to the Superior Court. In an appeal from the District Court to the Superior Court if the appellant wishes to include all or any portion of the transcript in the record on appeal, the appellant shall file with the notice of appeal a fully completed transcript order form including a brief description of those portions of the transcript which the appellant intends to include. The appellant shall at the same time order such portions in the manner provided by administrative order pursuant to subdivision (1) of this Subdivision. Payment arrangements for transcripts shall be made as provided by M.R. App. 5(b)(2). Immediately upon completion of the transcript, the office designated by administrative order shall transmit the original of it to the clerk of the District Court for filing and inclusion in the record on appeal. The clerk shall serve notice of such filing upon all parties. If the appellant does not file a description of transcript or does not include the entire transcript in their description, the appellee may, within 10 days after service of the notice of appeal, file a description of transcript and proceed as provided in this subdivision. The clerk of the District Court shall not file the record on appeal with the Superior Court until all portions of the transcript ordered in accordance with this subdivision have been filed. The party ordering a portion of the transcript shall pay the cost of that portion unless the court otherwise orders. All matters not essential to the decision of the questions presented by the appeal shall be omitted from the transcript. For the inclusion of nonessential matter, the Superior Court may withhold or impose costs as the circumstances of the case and discouragement of like conduct in the future may require; and costs may be imposed upon offending attorneys or parties.

(3) *Correction of Transcript.* If either party claims an error in the transcript, such error may be corrected at any time by agreement of the parties or by order of the court.

(e) Retention of Records. All electronic recordings and written records pertaining to a proceeding shall be retained in the office of the clerk for a period of at least ten days from the entry of judgment or other final disposition. During this

period, the clerk shall permit any recording to be heard upon request by any party or counsel in the proceedings in which the recording was made. A reasonable fee, may be charged for hearing a recording. At the conclusion of the 10-day period, such recordings and records shall then be mailed by the clerk to a repository as directed by the Chief Justice or Chief Judge. Such records and recording shall be retained under the jurisdiction of the Chief Justice or Chief Judge for such a period of time from entry of final judgment as they shall determine by administrative order. They shall establish other standards and procedures to assure the orderly transmission, retention and destruction of recordings and records under this subdivision.

**Advisory Note  
2003**

This amendment to Rule 76H(e) removes the reference to a specific fee. The fees for allowing and supervising listening to recordings will be set and revised in the Court Fees Schedule.

**Advisory Committee's Notes  
July 1, 2001**

The amendments to Rule 76H(d)(2) substitute references to the appropriate sections of the Maine Rules of Appellate Procedure for references to the provisions of Rule 74 and Rule 74A of the Maine Rules of Civil Procedure which are being replaced by the Maine Rules of Appellate Procedure.

**Advisory Committee's Note**

**January 1, 2001**

Rule 76H was amended by deleting subdivision (f). The subject matter of Rule 76H is to prescribe a procedure for the creation, transcription and retention of electronic sound recordings in the courts. Subdivision (f) required that any administrative orders, procedures and similar requirements established by the court shall be published and made available to members of the bar. This provision too narrowly focused on electronic sound recording procedures and, if broadened, would have been out of place in Rule 76H. Consequently, a new Rule 87 has been adopted to make clear that all administrative orders, standards, procedures, schedules and forms promulgated or established by any of the courts shall be published and made available to the clerks and the members of the bar.

**Advisory Committee's Notes  
May 1, 2000**

Subdivision (d)(2)(B) is amended to recognize the requirements of the transcript production Administrative Order of September 19, 1997. Mostly this is accomplished by reference to Rule 74(b)(4), as recommended to be revised.

**Advisory Committee's Notes  
1993**

Rule 76H is amended pursuant to 4 M.R.S.A. § 651-A, enacted by P.L. 1991, ch. 591, § E-3, to reflect the fact that electronic recording is now being used in the Superior Court in a number of counties and will be made available in that court throughout the state as funds permit installation of the necessary equipment. The Chief Justice of the Superior Court and the Chief Judge of the District Court will issue appropriate administrative orders to implement the rule in the two courts. Note that Rule 76H(d)(2)(3) continues to apply only to transcripts on appeal from the District Court to the Superior Court. Transcripts on Law Court appeals are governed by Rules 74(b) and 74A(b). [Now M.R.App.P. 5(b)(2) and 6(c).]

**ADMINISTRATIVE ORDER  
[Standards and Procedures for Recording]  
Effective October 15, 1997**

This order is adopted to address the method to be used in making a record of court proceedings. The order recognizes the resource limitations facing the courts in preparing records and the need for flexibility in using those resources. At the

same time, it is necessary to establish criteria to ensure that transcripts can be provided when required.

1. Records of court proceedings will be created using one of the following methods:

- a. Official Court Reporter.
- b. Electronic recording.

2. These methods will be used as follows:

- a. In the Superior Court, an Official Court Reporter will be used for jury trials and, when ordered, for testimony before the grand jury.
- b. In the Superior Court, an Official Court Reporter or electronic recording will be used for nonjury trials and other testimonial proceedings.
- c. In the Superior Court, an Official Court Reporter or electronic recording will be used for criminal nontestimonial proceedings.
- d. In the District Court and the Administrative Court, an electronic recording will be used for trials, other testimonial proceedings, and criminal nontestimonial proceedings,
- e. No record will be made in any court of civil nontestimonial matters.

3. In exceptional circumstances, the application of the criteria stated above may be modified as follows:

- a. No record at all will be made when the parties and the judge agree.
- b. Subject to a recognition of resource limitations, the presiding judge or justice may deviate from these criteria for good and sufficient reason stated on the record.

c. Whenever both methods are approved pursuant to paragraph 2 above, the choice will be made by the Regional Court Administrator who will attempt to avoid adverse impact by considering staff availability and transcript production backlog status of both the Official Court Reporters and the Electronic Recording Division.

4. In District Court, twenty-four hours advance notice is required for recording of civil proceedings. Whenever electronic recording is used, a recording log, as specified by the Electronic Recording Supervisor, will be completed. For arraignments and misdemeanor pleas in the District Court, an abbreviated recording log, as specified by the Electronic Recording Supervisor, will be completed. Any electronic recording made without compliance with this paragraph will not be transcribed or copied.

5. In order to preserve resources, requests for transcripts will be controlled as follows:

a. Members of the bar are encouraged to use alternatives to transcription, such as agreed statements of fact or statements of the evidence.

b. Transcription of daily copy is prohibited except when approved by the trial judge in consultation with a Regional Court Administrator.

c. Judges may not order transcripts, other than brief excerpts, without the approval of the Chief Justice of the Superior Court or Chief Judge of the District Court.

Dated: September 19, 1997

For the Court

*Chief Justice*

ADMINISTRATIVE ORDER  
Regarding [Duplicate Tapes of] Electronic Recording  
in the Superior and District Courts  
Effective March 15, 1995

Pursuant to Rule 76H, M.R. Civ. P., the preparation and availability of duplicate tapes of official court proceedings shall be governed as follows:

1. The Electronic Recording Division shall provide a duplicate tape recording of any official court proceeding which has been electronically recorded pursuant to Rule 76H, M.R. Civ. P., to counsel of record or a party upon request.

2. Duplicate tapes shall not constitute a part of an official record nor shall it be admissible into evidence.

3. No record or transcription made from a duplicate tape, nor any part thereof, shall be incorporated in or substituted for any portion of a transcript included in an official record without the consent of all parties to the proceeding and with the approval of the presiding justice or judge.

4. No record or transcription made from a duplicate tape, nor any part thereof, shall be incorporated in or substituted for any portion of a transcript which is to be admitted into evidence or used for the impeachment or rehabilitation of a witness in any official proceeding without the consent of all parties to the proceeding and with the approval of the presiding justice or judge.

5. Tapes of proceedings which are confidential by statute or rule may not be duplicated except by Order of the court.

6. The Electronic Recording Division shall charge a fee of \$20.00 for the first tape (Fn. 1) and \$7.50 for each additional tape of the same proceeding.

7. The Electronic Recording Division shall request a deposit in advance which shall be sufficient to cover the estimated costs of providing a duplicate tape.

8. This Order shall apply to both civil and criminal proceedings in the Superior and District Courts.

Fn. 1. This charge applies to the first tape, regardless of length. Each tape will record approximately 45 minutes of testimony.